
Volume 91
Issue 3 *Dickinson Law Review* - Volume 91,
1986-1987

3-1-1987

Pennsylvania's Protection From Abuse Act: A Decade in Existence Generates Judicial Interpretation and New Changesby House Bill 2026

Connie Jean Merwine

Follow this and additional works at: <https://ideas.dickinsonlaw.psu.edu/dlra>

Recommended Citation

Connie J. Merwine, *Pennsylvania's Protection From Abuse Act: A Decade in Existence Generates Judicial Interpretation and New Changesby House Bill 2026*, 91 DICK. L. REV. 805 (1987).
Available at: <https://ideas.dickinsonlaw.psu.edu/dlra/vol91/iss3/6>

This Article is brought to you for free and open access by the Law Reviews at Dickinson Law IDEAS. It has been accepted for inclusion in Dickinson Law Review by an authorized editor of Dickinson Law IDEAS. For more information, please contact lja10@psu.edu.

Pennsylvania's Protection From Abuse Act: A Decade in Existence Generates Judicial Interpretation and New Changes by House Bill 2026

I. Introduction

The Pennsylvania Crimes Code clearly states that, "A person is guilty of assault if he . . . attempts to cause or intentionally, knowingly or recklessly causes bodily injury to another . . ."¹ The Code does not grant an exception to this rule because of a special relationship between the actors. Nevertheless, today as in the past,² society permits a man to beat his wife without fear of punishment.³ Increased public awareness of the problem of domestic violence has resulted in the enactment of laws throughout the country that provide for civil proceedings designed to protect women from their abusive spouses.⁴ One such law is the Pennsylvania Protection From Abuse Act⁵ ("Act") which provides battered women⁶ with a civil

1. 18 PA. CONS. STAT. ANN. § 2701 (Purdon 1983).

2. See Oppenlander, *The Evolution of Law and Wife Abuse*, LAW & POL'Y Q. 382 (1981). Oppenlander gives a history of laws, from English and Roman law, which allowed husbands to beat their wives, to the American legal tradition of excluding family arguments from criminal justice intervention. See also D. MARTIN, BATTERED WIVES 25-35 (1976). Martin discusses the patriarchal family model which has allowed battering of wives.

Some cultures are still largely patriarchal and actually condone wife-beating publicly. For example, Eisaku Sato, a former prime minister of Japan, prior to his nomination for the Nobel Peace prize which he received in 1974, was publicly accused by his wife of beating her. Sato's popularity increased in the Japanese authoritarian and patriarchal culture when his wife announced that he was a good husband — he only beat her once a week. *Flipside of the Japanese Miracle*, 3 ALTERNATIVE PRESS DIG. 66 (1975), as cited in MARTIN, *supra*, at 45.

3. UNITED STATES ATTORNEY GENERAL'S TASK FORCE ON FAMILY VIOLENCE FINAL REPORT, UNITED STATES DEPARTMENT OF JUSTICE 18-19 (Sept. 1984) [hereinafter FAMILY VIOLENCE]. In a large number of law enforcement agencies, domestic violence calls are given low priority because of the attitude that such violence is less serious than violence between strangers.

4. Lerman, *A Model State Act: Remedies for Domestic Abuse*, 21 HARV. J. ON LEGIS. 61, 62-3 (1984).

5. Pennsylvania Protection From Abuse Act, PA. STAT. ANN. tit. 35, §§ 10181-10190 (Purdon 1977 & Supp. 1986).

6. The Protection From Abuse Act itself does not limit its availability to women. Although husbands are sometimes the victims of assaults by their wives, this comment refers to the victim as the wife and the batterer as the husband because the overwhelming majority of domestic violence victims are female. See Straus, *Wifebeating: Causes, Treatment, and Research Needs*, in BATTERED WOMEN: ISSUES OF PUBLIC POLICY, U.S. COMM'N ON CIVIL RIGHTS, CONSULTATION 463 at 469-70 (1978). The author lists reasons why battered women must be the immediate focus of social policy: (1) underreporting of violence is greater for violence by husbands than it is for violence by wives; (2) husbands engage in more dangerous

remedy for spouse⁷ assault. The Act was designed to prevent the recurrence of abuse between family or household members who reside together. Although the Act seemed comprehensive when it was enacted a decade ago in 1976,⁸ amendments were added in 1978⁹ to correct problems which were not anticipated. Currently, additional changes are being examined by the Pennsylvania House Judiciary Committee in House Bill 2026.¹⁰ These changes, if passed, would further increase the effectiveness of the Act by providing for extended emergency relief, venue and transfer of orders, court-provided aid, additional forms of relief, and civil and criminal immunity for police officers who make warrantless arrests for violations of orders issued under the Act.

This comment begins with a brief overview of domestic violence in the United States today. It describes the ineffectiveness of the criminal justice system in providing remedies for battered women. The comment then considers Pennsylvania's current Protection From Abuse Act and judicial interpretation of its provisions. The discussion posits that the current Act must be changed to provide the additional relief which battered women deserve. The comment then analyzes the changes to the Act proposed in House Bill 2026. The comment concludes that even if the legislature passes the proposed amendments to the Act, practical problems will still remain for battered women requesting relief under the Act.

II. Domestic Violence: An Overview

A. *The Need for Protection*

Domestic violence is not a rare phenomenon; it is a social problem of enormous significance which cuts across all socio-economic

and injurious forms of violence; (3) husbands repeat their violent acts more often than do wives; (4) research indicates that violent acts by wives are often a self-defense measure against violence started by their husbands; (5) husbands generally have greater physical strength than their wives and, therefore, the likelihood of serious injury to the wives is greater than if they assaulted their husbands; (6) a higher number of attacks by husbands seem to occur when the wife is pregnant, thus posing a danger to the unborn child; (7) various economic and social constraints particular to the wives trap them in the marriage and force them to remain with their abusive husbands. For a discussion regarding the incidence of husband-battering see Straus, *Wifebeating: How Common and Why?*, in M. STRAUS & G. HOTALING, *THE SOCIAL CAUSES OF HUSBAND-WIFE VIOLENCE* 30-33 (1980), which estimates that 282,000 men are beaten by their wives each year.

7. Domestic violence is not limited to married couples, and the Act applies to both married and unmarried domestic relationships. However, this comment refers to the partners as husband and wife for ease of reading.

8. PA. STAT. ANN. tit. 35, §§ 10181-10190 (Purdon 1977).

9. PA. STAT. ANN. tit. 35, §§ 10181-10190 (Purdon Supp. 1986).

10. H. 2026 (1986) (Printer's No. 2761).

lines.¹¹ According to most experts, spouse abuse is a widespread and serious problem.¹² A recent estimate of spouse abuse states that every eighteen seconds a wife is beaten in the United States. More women are injured by their husbands than by mugging, automobile accidents and rape combined.¹³

An oft-asked question concerning spouse abuse is: Why would a woman continue to live with a man who beats her? No one-line answer exists; rather, many different reasons contribute to each woman's decision to stay in an abusive relationship. Women often remain in violent relationships because they are concerned for the welfare of their children. Many battered women¹⁴ lack job skills, experience and money and are therefore incapable of supporting themselves and their children. Ironically, the children the mother is trying to protect are adversely affected by remaining in the house where the domestic violence occurs.¹⁵ Children's attitudes toward other human beings are colored by the violence they are exposed to at home. These attitudes may result in future violence by them in their adult relationships.¹⁶

11. Eisenberg and Micklow, *The Assaulted Wife: "Catch-22" Revisited*, 3 WOMEN'S RTS. L. RPTR. 138, 144 (1977); FAMILY VIOLENCE, *supra* note 3, at 11. Contrary to popular myths, family violence cuts across all racial and economic lines. L. WALKER, *THE BATTERED WOMAN* 21 (1979). Walker notes that lower-class women are more likely to come in contact with community agencies and therefore their problems are more visible.

12. M. STRAUS, R. GELLES, & S. STEINMETZ, *BEHIND CLOSED DOORS-VIOLENCE IN THE AMERICAN FAMILY* 32, 40 (1980) (estimating that 28% of all married women suffer abuse at the hands of their husbands; at least 1.8 million women are battered by their husbands or boyfriends). See also WALKER, *supra* note 11, at ix. Walker estimates that 50% of all women are battered at some time during their marriages. Estimates of abuse are generally limited to the incidence of physical rather than psychological abuse, though research often measures both. L. WALKER, *THE BATTERED WOMAN SYNDROME* 27-28 (1984). The precise extent of the problem remains unknown, partly because of underreporting to police and partly because the statistics do not distinguish assaults between non-strangers from assaults between strangers.

13. Machlowitz, *Lawyer in the Aisle: PBS Explores the Hell of Family Violence*, 71 A.B.A. J. 120 (June 1985). In addition, wife beating accounts for twenty percent of all police calls, and forty percent of all serious injuries treated in hospital emergency rooms.

14. "A battered woman is a woman who is repeatedly subjected to any forceful physical or psychological behavior by a man in order to coerce her to do something he wants her to do without any concern for her rights." WALKER, *supra* note 11, at xv.

15. Although the Protection From Abuse Act also covers abuse of children, Pennsylvania has enacted a statute, The Child Protective Services Act, which protects children from parental abuse by requiring persons with knowledge of such abuse to report it to the local welfare agency. PA. STAT. ANN. tit. 11, §§ 2201-2224 (Purdon Supp. 1986). The procedures for handling child abuse cases are beyond the scope of this comment.

16. See Star, Clark, Goetz, & O'Malia, *Psychological Aspects of Wife Battering*, SOCIAL CASEWORK 479 (1979), as cited by Ramsey, *Ohio's Domestic Violence Law*, 8 OHIO N.U.L. REV. 895 (1981), stating that domestic violence may even be self-perpetuating, as the children who witness abuse learn violence and become adults who, in turn, use violence in their own families; Crites, *Our Judges Must Do More to Stem Wife Abuse*, L.A. DAILY J., Dec. 2, 1985, at 4, col. 3, the author states that family violence plays a significant role in socializing children to view violence as appropriate behavior, and that up to eighty percent of men who

A variety of additional reasons exist which often keep women in abusive relationships: (1) women in our culture are encouraged to believe that the failure of a marriage represents their own failure as women;¹⁷ (2) the batterer in an emotional plea for forgiveness often promises to reform;¹⁸ (3) women fear reprisal by their husbands if they leave;¹⁹ (4) battering causes women to have a lack of self-esteem.²⁰ For any or all of these reasons, a battered woman may find it difficult to leave the abusive relationship or even attempt to get help.

B. *The Ineffective Criminal Justice System*

A major problem faced by a woman who is the victim of spouse abuse is inaction by the police. The police are often the first outside authority called by women who are able to request help, but frequently their pleas for help are of no avail. Law enforcement agencies have been accused of treating domestic assaults differently than non-domestic assaults.²¹ Police failure to respond adequately to vic-

abuse their wives were victims of violence or witnessed the abuse of their mothers; WALKER, *supra* note 11, at 57-66, for the impact of violence in the home on children.

17. MARTIN, *supra* note 2, at 81.

18. *Id.*

19. *Id.*

20. Walker's Cycle Theory of Violence is often used to explain the battered woman's feelings of helplessness in the violent relationship. Walker's three-stage cycle of violence contains: (1) a tension-building stage, characterized by minor abuse; (2) an acute battering stage, characterized by uncontrollable explosions of brutal violence; (3) a loving respite stage, characterized by calm and loving behavior by the batterer, and also by his pleas for forgiveness. WALKER, *supra* note 11, at xv.

21. FAMILY VIOLENCE, *supra* note 3, at 10-12. The report discusses how the traditional and current legal response to domestic violence is based on the relationship between the victim and the abuser. This response has failed to communicate to violent families that domestic violence is a crime. The report recommends that family violence be recognized and responded to as criminal activity.

The reluctance of police to respond to domestic disturbances is also supported by the officers' view of the situations as dangerous to themselves, emotionally charged, and difficult to resolve. U.S. COMM'N ON CIVIL RIGHTS, UNDER THE RULE OF THUMB: BATTERED WOMEN AND THE ADMINISTRATION OF JUSTICE 91 (Jan. 1982) [hereinafter RULE OF THUMB]. Statistics tend to support this view. For example, in Pennsylvania in 1982, of the 3806 total assaults on police, 37% (or 1407) occurred when the police were responding to disturbance calls. These figures also show the lack of available data on domestic violence; the figures do not distinguish between stranger and non-stranger assaults. Disturbance calls include family quarrels, man with a gun, disorderly conduct, and bar fights. Crime in Pennsylvania: Uniform Crime Report, 1978-82, Pennsylvania State Police. This reporting practice limits the ability of police to deal effectively with domestic assault cases since it limits the amount of available information about spouse abuse. RULE OF THUMB, *supra* at 92. In addition, the response of police is limited by the long-standing common law rule which allows a police officer to make a warrantless arrest if he has probable cause to believe the suspect has committed a felony, but prohibits a warrantless misdemeanor arrest unless the officer witnessed the crime. Many spouse abuse calls are for misdemeanor assault and battery, and so the officer is precluded from making an immediate arrest. Gottlieb, *Reform in Kansas Domestic Violence Legislation*, 31 U. KAN. L. REV. 527, 534 (1983).

tims of spouse assault has been documented in studies which show a police policy of non-intervention and avoidance of arrest of abusers.²² This under-enforcement of the law sends a message to both victims and batterers that spouse assault will not be treated like other crimes. This inaction contributes to the perpetuation of violence in the relationship.²³ Recently, litigation on behalf of battered women has attacked this policy of non-intervention by law enforcement agencies. In turn, this litigation caused some police departments to adopt new standards and procedures for use in domestic violence

22. See, e.g., Oppenlander, *Coping or Copping Out—Police Service Delivery in Domestic Disputes*, 20 CRIMINOLOGY 449 (1982). A research study of three metropolitan areas showed a lack of law enforcement in the area of domestic disputes, and included a finding that police are slower in arriving at the scenes of domestic arguments than at those between unrelated disputants. The Police Foundation, *Domestic Violence and the Police: Studies in Detroit and Kansas City* (National Institute of Justice, 1977), found that in one city, police had been called at least once before in 85 % of spouse assault and homicide cases; in 50 % of these cases the police had responded five times to family violence incidents prior to the homicide. Bowker, *Police Services to Battered Women—Bad or Not So Bad?*, 9 CRIM. JUST. & BEHAV. 476 (1982), a study of 146 battered women in Milwaukee found that the wives had asked police to arrest their husbands in 82% of the incidents, but arrest followed in only 14% of the incidents. See also MARTIN, *supra* note 2, at 93-100, illustrating police non-arrest policy in numerous cities; RULE OF THUMB, *supra* note 21, at 91, finding by the commission that police traditionally have viewed most incidents of spouse abuse as private matters best resolved by the parties themselves without resort to the legal process; *supra* note 3. For a summary of past research on police policy of non-intervention, see Bell, *Domestic Violence: Victimization, Police Intervention, and Disposition*, 13 J. CRIM. JUST. 525-27 (1985).

Sometimes the policy of police non-intervention is evidenced by written police procedures. For example, the Michigan State Police Training Academy's procedure for domestic violence situations provides:

- a. Avoid arrest if possible. Appeal to their vanity.
- b. Explain the procedure of obtaining a warrant.
 - (1) Complainant must sign complaint.
 - (2) Must appear in court.
 - (3) Consider loss of time.
 - (4) Cost of court.
- c. State that your only interest is to prevent a breach of the peace.
- d. Explain that attitudes usually change by court time.
- e. Recommend a postponement.
 - (1) Court not in session.
 - (2) No judge available.
- f. *Don't* be too harsh or critical.

as cited in Eisenberg and Micklow, *supra* note 11, at 156-57.

23. Nearly a third of female homicide victims are killed by their husbands or boyfriends, FAMILY VIOLENCE, *supra* note 3, at 11, citing U.S. Dep't of Justice, Federal Bureau of Investigation Uniform Crime Reports for 1983. In some instances, the battered woman may feel forced to kill in self-defense, because the police are of no help and she is unable to leave the abusive relationship. The theory of self-defense has been used by attorneys representing battered women charged with murdering their husbands. See Note, *The Battered Woman Syndrome and Self-Defense: A Legal and Empirical Dissent*, 72 VA. L. REV. 619 (1986); Buda and Butler, *The Battered Wife Syndrome: A Backdoor Assault on Domestic Violence*, 23 J. FAM. L. 359 (1984-5); Crocker, *The Meaning of Equality for Battered Women Who Kill Men in Self-Defense*, 8 HARV. WOMEN'S L.J. 121 (1985); Note, *The Battered Wife's Dilemma: To Kill or To Be Killed*, 32 HASTINGS L.J. 895 (1981).

situations.²⁴

The policy of non-intervention in cases of domestic violence is not limited to police departments. Prosecutors often hesitate to file charges against abusers,²⁵ and criminal penalties seldom reflect the seriousness of the crimes.²⁶ Even if the criminal justice system effectively responded to the plight of battered women, criminal prosecution of their husbands would not be a desirable alternative for many battered wives. Criminal prosecution may involve imprisonment of the husband, which often removes the family's only source of income.²⁷ Moreover, battered women seek to protect themselves from future abuse, and the slow-moving criminal process does not offer them the immediate protection they need.²⁸ If the batterer is released on bail pending trial, the victim may be subjected to renewed

24. Class action suits have been brought against law enforcement agencies for their failure to respond in domestic violence situations. See *Settlement Decree*, Scott v. Hart, No. C76-2395 (N.D. Cal., filed Nov. 9, 1979) (out-of-court settlement in which the police department agreed to treat domestic assaults as it would other criminal conduct and inform victims of their rights to criminal and civil court proceedings); Bruno v. Codd, 90 Misc.2d 1047, 396 N.Y.S.2d 974 (Sup. Ct. 1977), *rev'd on other grounds*, 64 A.D.2d 582, 407 N.Y.S.2d (1978), *aff'd*, 47 N.Y.2d 582, 393 N.E.2d 976, 419 N.Y.S.2d 901 (1979) (upholding the justiciability of suits against law enforcement agencies for failure to enforce laws against battering men; declaratory and injunctive relief was not granted because consent judgment was already entered).

Police agencies that do not arrest are being held liable for failure to protect battered women. See *Thurman v. Torrington*, 595 F. Supp. 1521 (D. Conn. 1984) (court denied the City of Torrington's motion to dismiss Thurman's claim that the non-arrest policy violated the equal protection clause of the 14th Amendment; jury awarded Thurman \$2.3 million in damages after finding that twenty-four police officers violated the equal protection clause when the police officers took more than twenty-five minutes to respond to her call for help; Thurman suffered partial paralysis and extensive scarring as a result of her estranged husband's attack which her three-year old son witnessed; the parties settled for \$1.9 million); *Nearing v. Weaver*, 295 Or. 702, 670 P.2d 137 (1983) (court held that police officers who knowingly fail to enforce court orders by failing to arrest and take into custody perpetrators of domestic violence, pursuant to Oregon's Abuse Prevention Act, OR. REV. STAT. §§ 107.700 *et seq.* (1985), may be potentially liable for psychological and physical harm to the intended beneficiaries of the order).

25. RULE OF THUMB, *supra* note 21, at 93. Prosecutors frequently attribute their low rate of prosecution of spouse abuse cases to what they believe is the victims' unwillingness to cooperate, but this expectation in turn tends to discourage victims from using the criminal justice system because only a few cases ever get prosecuted. See also Lerman, *Criminal Prosecution of Wife Beaters*, RESPONSE 1 (1981). Many prosecutors still believe that family violence is better handled by social service agencies or domestic relations courts than by criminal courts.

26. RULE OF THUMB, *supra* note 21, at 95. See also Crites, *A Judicial Guide to Understanding Wife Abuse*, 24 JUDGES J. 4, 7 (1985). Crites lists reasons why many judges respond ineffectively to spouse abuse: (1) judicial gender bias; (2) ignorance of the psychological dynamics of the crime; and (3) lack of awareness of the seriousness of the crime and the deterrent impact judges might have on offenders. Factors such as age, limited turnover, and an inclination toward traditional attitudes and male dominance of the profession, make a quick change in judicial response to domestic violence unlikely.

27. WALKER, *supra* note 11, at 216.

28. Truninger, *Marital Violence: The Legal Solution*, 23 HASTINGS L.J. 259, 263-64 (1971).

attacks; the batterer may return home angrier than ever and renew his violent behavior.²⁹ The woman's fear of reprisal continues for a long time since the trial may be months away.³⁰

III. Pennsylvania's Civil Remedy for Domestic Violence

Battered women require immediate and adequate legal protection. Because of the difficulties associated with reliance on the criminal justice system, many women now turn to civil protection orders as an alternative. The Pennsylvania Protection From Abuse Act³¹ is an example of such an alternative. The Act provides access to a civil proceeding whereby the victim of domestic violence may obtain immediate protection, through the court or district justice, from abuse³² by persons with whom she lives or with whom she has resided, if both parties continue to have legal access to the residence.³³

Other remedies, both civil and criminal, are available to a victim who proceeds under the Act.³⁴ For example, a battered wife may file a criminal complaint in addition to requesting immediate protection under the Act.³⁵ Furthermore, extra-judicial remedies, such as shelter services, also remain available, since a battered wife who must leave the household for her own protection does not jeopardize her right to relief under the Act.³⁶

The Act does not limit relief to the victim of the violence. A parent or adult household member may seek relief³⁷ on behalf of

29. Gottlieb, *supra* note 21, at 534.

30. *Id.*

31. PA. STAT. ANN. tit. 35, §§ 10181-10190 (Purdon 1977 & Supp. 1986).

32. Abuse is defined by the Act to be the occurrence of one or more of the following acts:

(i) Attempting to cause or intentionally, knowingly or recklessly causing bodily injury or serious bodily injury with or without a deadly weapon.

(ii) Placing by physical menace another in fear of imminent serious bodily injury.

(iii) Sexually abusing minor children as defined pursuant to the act of November 26, 1975 (P.L. 438, No. 124), known as the "Child Protective Services Law." (11 P.S. § 2201 *et seq.*).

PA. STAT. ANN. tit. 35 § 10182 (Purdon Supp. 1986).

The definition of "abuse" in the Act was derived from the definitions of simple and aggravated assault found in the Pennsylvania Crimes Code in 1976, 18 PA. CONS. STAT. ANN. §§ 2701, 2702 (Purdon 1973), as stated in Note, *Relief for Victims of Intra-Family Assaults—The Pennsylvania Protection From Abuse Act*, 81 DICK. L. REV. 815, 816 (1977).

33. Title 35, § 10182.

34. Title 35, § 10189.

35. For a discussion of the constitutionality of allowing substantive criminal charges to be filed in addition to the contempt charge see *infra* text accompanying notes 69-97.

36. Title 35, § 10183.

37. Title 35, § 10189. Proceedings under the Act are to be in accordance with PA. R. CIV. P. 1901-1905. The action may be commenced either by filing with the prothonotary a petition alleging abuse by the defendant, Rule 1902(a), or by filing with the office of the

minor children.³⁸ Under the Act, a plaintiff who for financial reasons is unable to pay the costs of filing and service to the defendant may proceed without paying the costs when she files.³⁹ However, at the hearing on the petition, the court will determine if the plaintiff is indigent; if the plaintiff is not indigent, the court may order the plaintiff to pay the court costs.⁴⁰

Within ten days of the filing of the petition, a hearing must be held "at which the plaintiff must prove the allegation of abuse by a preponderance of the evidence."⁴¹ At the hearing the defendant must be advised by the court of his right to be represented by counsel.⁴² If a protection order is issued by the court, a copy of the order is given "to the plaintiff, the defendant and the police department with appropriate jurisdiction to enforce the order."⁴³

The Act permits the court to grant a protection order containing various forms of relief.⁴⁴ Relief is not limited to what the battered woman desires most: ordering the defendant to "refrain from abuse."⁴⁵ The court may grant exclusive possession of the residence to the victim.⁴⁶ The Act also contains provisions which allow the

prothonotary a certified order of the district justice under the emergency relief provision of the Act, Rule 1902(b). The petition or certified order commencing an abuse action is served on the defendant by the sheriff or any competent adult, Rule 1903(a).

38. Title 35, § 10184(a). See *Lucke v. Lucke*, 300 N.W.2d 231 (N.D. 1980) (consent of an abused adult is not required for issuance of a protection order provided that a spouse or family member is the applicant for such order).

39. Title 35, § 10184(b).

40. *Id.*

41. Title 35, § 10185(a). See *Marquette v. Marquette*, 686 P.2d 990 (Okla. App. 1984) (the act is civil, not criminal, in nature because the complaining party, not the state, must be the victim of the abuse, and therefore the "beyond a reasonable doubt" standard of proof is not required under the Act, which specifies that the "preponderance of the evidence" test should be used).

In addition to this burden of proving the allegation of abuse by a preponderance of the evidence, the petition must contain specific allegations of actual incidents of abuse which occurred prior to filing the petition for a protection order. These requirements serve to prevent unjustified and erroneous orders from being issued by the court based on a petition containing a general allegation of abuse.

42. Title 35, § 10185(a).

43. Title 35, § 10187. This provision requiring police departments to keep copies of the protection orders on file is very important because many battered women report that their restraining orders are torn up by the batterer long before the arrival of police. *WALKER, supra* note 11, at 210.

44. Title 35, § 10186(a).

45. Title 35, § 10186(a)(1).

46. Title 35, § 10186(a)(2). This order is influential in the battering relationship because the abuser, rather than the victim, is forced to bear the burden of finding alternative housing, and because the order establishes a clearly enforceable right of the victim, the violation of which can be easily documented. Buzawa and Buzawa, *Legislative Trends in the Criminal Justice Response to Domestic Violence*, in A. LINCOLN & M. STRAUS, *CRIME AND THE FAMILY* 144 (1985). This provision places the abused spouse in a fairer and more protected position. However, the Act explicitly states that "[n]o order . . . under this act shall in any

court to order the defendant to pay financial support to the plaintiff and minor children if he has a duty to do so,⁴⁷ to award temporary custody of minor children and to establish temporary visitation rights.⁴⁸ Any order granted by the court is for a fixed time period up to one year.⁴⁹

Battered women may seek immediate relief by obtaining a protection order. The less time it takes to obtain a protection order, the more effective it is likely to be. Cognizant of this fact, the Act allows the court to issue any *ex parte* temporary orders which it deems necessary to protect the plaintiff from abuse until the court can hold a hearing.⁵⁰ No notice is given to the defendant prior to the hearing.⁵¹ Immediate and present danger of abuse must be shown.⁵² Emergency relief is available from district justices when the court is unavailable from the close of business at the end of the week until the resumption of business at the beginning of the next week.⁵³

If the district justice finds it necessary to protect the plaintiff, upon a showing of good cause, he may grant any relief available under the Act, including the exclusion of the defendant from the household.⁵⁴ Protection orders issued by district justices expire at the resumption of business by the court, or within 72 hours, whichever is sooner.⁵⁵ At that time, the plaintiff must file for protection with the court.

Although proceedings under the Act are civil actions, criminal ramifications will occur if the defendant violates a court order ob-

manner affect title to any real property." Title 35, § 10186(c).

Under Title 35, § 10186(a)(2) the plaintiff may be granted exclusive possession of the household, whether the household is owned or leased jointly by the parties, solely by the plaintiff or by the entireties. If the defendant is the sole owner or lessee, he may be evicted and possession granted to the plaintiff, or the court may require the defendant to provide the plaintiff with suitable alternative housing. *Id.* § 10186(a)(3).

47. Title 35, § 10186(a)(5). *Brookhart v. Brookhart*, 17 Pa. D. & C.3d 795 (1981), held that an order of support may be entered against the defendant even though the plaintiff did not request support in her petition.

48. Title 35, § 10186(a)(4).

49. Title 35, § 10186(b). See *Keith v. Keith*, 28 Pa. D. & C.3d 462 (1984) in which the court held that an order under the Act may not be extended beyond a one-year period if no other acts of abuse, as defined by the Act, occurred. In *Keith*, the court found that while being in close proximity to their father may cause the children stress, fear and emotional strain, this did not rise to the level of abuse as defined under the Act. See KAN. STAT. ANN. § 60-3111 (Supp. 1982) (the Kansas Protection From Abuse Act restricts the availability of orders to two per year except in the case of abuse of a minor).

50. Title 35, § 10185(b). For a discussion of the constitutionality of this provision, see *infra* text accompanying notes 63-68.

51. PA. R. CIV. P. 1207.

52. Title 35, § 10185(b).

53. Title 35, § 10188(a) and PA. R. CIV. P. 1203.

54. Title 35, § 10188(a) and PA. R. CIV. P. 1208.

55. Title 35, § 10188(b) and PA. R. CIV. P. 1210.

tained under the Act.⁵⁶ An officer may make a warrantless arrest, after verifying the existence of the protection order,⁵⁷ if he has probable cause to believe the terms of the protection order have been violated.⁵⁸ The defendant may be held in indirect⁵⁹ criminal contempt by the court for violating the protection order.⁶⁰ The Act specifically states that the punishment available for violation of a protection order includes "imprisonment up to six months or a fine not to exceed \$1000 or both."⁶¹ The defendant is not entitled to a jury trial on the charge of indirect criminal contempt.⁶²

IV. Judicial Interpretation of the Act

The Pennsylvania courts have infrequently interpreted the Protection From Abuse Act since its enactment a decade ago. Nevertheless, very important issues concerning the Act have been raised by parties and decided by the courts. Defendants in proceedings under the Act have challenged its provisions on constitutional grounds. These attacks have proved unsuccessful. Both parties in protection order actions have encountered procedural hurdles, and Pennsylvania courts have given guidance on specific issues raised by parties who were involved in proceedings under the Act.

A. Constitutionality

1. *Due Process*.—The *ex parte* provision of the Act allows a spouse to be temporarily excluded from jointly-owned property without notice and an opportunity to be heard.⁶³ Any contention that this provision is unconstitutional appears decisively settled by *Boyle v. Boyle*.⁶⁴ In that case, the defendant argued that the *ex parte* order which his wife had obtained violated due process because it deprived him of property without notice and an opportunity to be heard.⁶⁵ The

56. Title 35, § 10190.

57. If the plaintiff does not have a copy of the protection order with her, then the officer may verify the existence of the order by communicating with the appropriate police department, pursuant to title 35, § 10190(c); see *supra* note 43.

58. Title 35, § 10190(c).

59. Contempt is indirect when it does not occur in the actual presence of the court, or directly affect a proceeding then in progress. *Commonwealth v. Maurizio*, 496 Pa. 584, 437 A.2d 1195 (1981).

60. Title 35, § 10190(a).

61. Title 35, § 10190(b).

62. *Id.* For a discussion of the constitutionality of this provision see *infra* text accompanying notes 98-100.

63. Title 35, § 10185(b).

64. 12 Pa. D. & C.3d 767 (1979).

65. The due process requirements of notice and an opportunity to be heard are well established. See *Fuentes v. Shevin*, 407 U.S. 67 (1972). These requirements may be forsaken

court balanced the defendant's right to due process against the state's interest in protecting its citizens,⁶⁶ and it stated that giving such notice would defeat the main purpose of the Act: "the immediate temporary relief of a volatile situation where there is imminent danger of recurring further abuse of the plaintiff or minor children."⁶⁷ The court found the defendant's rights of notice and the opportunity to be heard were subordinate to the abused's right to immediate protection. Finding no viable alternatives to the *ex parte* order, and noting that the resulting exclusion was for a short period of time, the court held that the Act did not violate the defendant's right to due process and therefore was constitutional.⁶⁸

2. *Double Jeopardy*.—Similarly, no constitutional violation of the fifth amendment's prohibition against double jeopardy occurs under the Act when, in addition to contempt charges, substantive criminal charges are filed. The double jeopardy clause of the fifth amendment to the United States Constitution provides that no person shall "be subjected to the same offense to be twice put in jeopardy of a life or limb."⁶⁹ In *North Carolina v. Pearce*,⁷⁰ the United States Supreme Court held that the double jeopardy guarantee consists of three separate constitutional prohibitions: (1) second prosecu-

if there is a need for prompt action, such as when immediate and present danger of abuse is shown as required by Sections 10185(b) and 10188(a) of the Act. Furthermore, Section 10186(b) of the Act allows the alleged abuser to petition for a modification of the protection order which will protect the alleged abuser's right in cases where the petitioner fraudulently sought an exclusion order under the *ex parte* provision of the Act.

66. The United States Supreme Court, when ruling on a statute which allowed injunctive relief prior to notice and a hearing, stated that deferral of a hearing on deprivation of property may be permissible if (1) the petition includes statements of specific facts that justify the requested relief; (2) notice and opportunity for a full hearing are given as soon as possible, preferably within a few days after the order is issued; and (3) the temporary injunction is issued by a judge. See *Mitchell v. Grant*, 416 U.S. 600 (1974). This case involved a summary repossession of consumer goods on default of payments by the buyer. The court balanced the right of the buyer to notice and a hearing before repossession against the seller's property interest. Similarly, in *Boyle*, the court balanced the rights of the parties, and found that the protection order was necessary to preserve the physical safety of the petitioner.

67. 12 Pa. D. & C.3d at 774.

68. See *State ex rel. Williams v. Marsh*, 626 S.W.2d 223 (Mo. 1982). The provisions of Missouri's Adult Abuse Act, MO. REV. STAT. §§ 455.010 *et seq.* (1986), which permit courts to issue *ex parte* orders of protection, did not deprive the respondent of due process when the Act was necessary to secure governmental interests in protection of victims of abuse and prevention of further abuse. See Comment, *Ex Parte Protection Orders: Is Due Process Locked Out?*, 58 TEMPLE LAW Q. 843 (1985) for a thorough discussion of state courts' determinations of constitutionality of *ex parte* protection orders.

69. U.S. CONST. amend. V, cl. 2. The fifth amendment guarantee against double jeopardy is applicable to the states through the fourteenth amendment, *Benton v. Maryland*, 395 U.S. 784 (1969). Also, the Pennsylvania constitution provides that "no person shall, for the same offense, be twice put in jeopardy of life or limb" PA. CONST. art. I, sec. 10.

70. 395 U.S. 711, 717 (1969).

tion for the same offense after acquittal; (2) second prosecution for the same offense after conviction; and (3) multiple punishments for the same offense. The double jeopardy clause was examined by the Supreme Court of Pennsylvania in *Commonwealth v. Allen*,⁷¹ which involved the contempt provision⁷² of the Protection From Abuse Act.

The defendant in *Allen* had previously been convicted of indirect criminal contempt because he had violated the terms of the protection order which his wife had obtained under the Act. The protection order required the defendant to refrain from physically abusing, striking or harassing his wife and their minor children. The defendant allegedly violated the protection from abuse order by forcibly entering his wife's new residence, then physically abusing and raping⁷³ her. The wife requested that the defendant be charged under the contempt provision of the Act. After the contempt hearing, the defendant was found to be in contempt of the order and was directed to pay the costs and a fine of \$750. Since the contempt proceeding was criminal⁷⁴ in nature, the double jeopardy clause was implicated when an information was subsequently filed containing charges, based on the same conduct, of simple assault,⁷⁵ criminal trespass⁷⁶ and rape.⁷⁷

Allen filed an omnibus pretrial motion to quash the information,⁷⁸ contending that the finding that he was in contempt was a prior conviction which barred any prosecution on the simple assault, criminal trespass and rape charges. The defendant asserted that this

71. 322 Pa. Super. 424, 469 A.2d 1063 (1983), *aff'd in part, rev'd in part*, 506 Pa. 500, 486 A.2d 363 (1984), *cert denied*, 106 S. Ct. 128 (1985).

72. Title 35, § 10190.

73. For a recent discussion of the status of the marital rape exemption in Pennsylvania see Comment, *Spousal Sexual Assault: Pennsylvania's Place on the Sliding Scale of Protection from Marital Rape*, 90 DICK. L. REV. 777 (1986).

74. The Pennsylvania Superior Court determined that a finding that the defendant was in contempt of the order was one of criminal contempt, not civil. "[T]he dominant purpose of the proceeding was to determine whether [the defendant] had disobeyed the order entered pursuant to the Protection From Abuse Act and, if he had, to punish [him] so as to preserve the authority of the court and to protect the interests of the general public." 322 Pa. Super. at 431, 469 A.2d at 1067. In addition, title 35, § 10190(a) provides that violators of orders entered pursuant to the Act may be held in indirect criminal contempt.

75. 18 PA. CONS. STAT. ANN. § 2701 (Purdon 1983).

76. 18 PA. CONS. STAT. ANN. § 3503 (Purdon 1983).

77. 18 PA. CONS. STAT. ANN. § 3121 (Purdon 1983).

78. This motion was dismissed by President Judge G. Thomas Gates, and the defendant filed a timely appeal with the Superior Court of Pennsylvania, No. 2393 Philadelphia 1980, appeal from Order of the Court of Common Pleas of Lebanon County, Criminal, No. 328 of 1980. The Superior Court granted the defendant's requested relief regarding the simple assault charge, but remanded for trial on the charges of criminal trespass and rape. 322 Pa. Super. 424, 469 A.2d 1063 (1983). Both the defendant and the Commonwealth appealed to the Supreme Court of Pennsylvania.

subsequent prosecution was barred by the principle of double jeopardy. The Supreme Court of Pennsylvania first examined the applicable statutory provisions of the Crimes Code,⁷⁹ because the court will consider double jeopardy complaints only if statutory provisions do not require the grant of the relief requested.⁸⁰

The Supreme Court of Pennsylvania held that the statutory compulsory joinder rule,⁸¹ which prohibits a second prosecution after a previous prosecution for another crime which arose from the same criminal episode, was not applicable in the *Allen* situation. This rule was designed "to protect a person accused of crimes from governmental harassment of being forced to undergo successive trials for offenses stemming from the same criminal episode [and], as a matter of judicial administration and economy, to assure finality without unduly burdening the judicial process by repetitious litigation."⁸² The court found that neither of these policy considerations was served by requiring joinder of the contempt charge with the criminal charges. The contempt proceeding was privately triggered by the person in whose favor the order was entered; therefore, it did not involve the governmental harassment that the compulsory joinder rule seeks to protect against.⁸³ In addition, judicial economy would not be served by requiring joinder, since either the contempt hearing would have to be postponed, or the criminal charges accelerated.⁸⁴ The abused spouse needs prompt enforcement of the order, not the long delays involved with the criminal justice system. After finding that the statutory provision did not require the grant of the relief requested,⁸⁵ the Supreme Court of Pennsylvania considered the defendant's double jeopardy claim. The court held that the constitutional prohibition against double jeopardy did not prohibit criminal prosecution for simple assault, criminal trespass and rape after the actor had been found to be in contempt of a previous protection order based upon the same conduct.⁸⁶

79. 18 PA. CONS. STAT. ANN. § 110 (Purdon 1983).

80. *Commonwealth v. Hude*, 500 Pa. 482, 488, 458 A.2d 177, 180 (1983).

81. The compulsory joinder rule, 18 PA. CONS. STAT. ANN. § 110 (Purdon 1983), was promulgated by the Supreme Court of Pennsylvania in two decisions: *Commonwealth v. Campana*, 452 Pa. 233, 304 A.2d 432, *vacated and remanded*, 414 U.S. 808 (1973) [*Campana I*], on remand, *Commonwealth v. Campana*, 455 Pa. 622, 314 A.2d 854, *cert denied*, 417 U.S. 969 (1974) [*Campana II*].

82. 500 Pa. at 489, 458 A.2d at 180.

83. 506 Pa. at 509, 486 A.2d at 367.

84. *Id.*

85. Furthermore, 18 PA. CONS. STAT. ANN. § 107(c) (Purdon 1983) grants an exception to the compulsory joinder rule in Section 110 when the court punishes for contempt or employs any sanction authorized by law for the enforcement of an order.

86. 506 Pa. at 511-12, 486 A.2d at 368-9. *But see Commonwealth v. Maurizio*, 496 Pa.

The third constitutional protection against double jeopardy, the prohibition of multiple punishments for the same offense, is pertinent to the *Allen* situation in which a prosecution for substantive criminal offenses follows the defendant's conviction for contempt based on the same conduct. The test used to determine whether two offenses are identical for double jeopardy purposes is known as the *Blockburger*⁸⁷ test. The United States Supreme Court stated in *United States v. Blockburger*⁸⁸ that in order to determine whether or not two criminal charges violate the double jeopardy clause, "[t]he applicable rule is that where the same act or transaction constitutes a violation of two distinct statutory provisions, the test to be applied to determine whether there are two offenses or only one, is whether each provision requires the proof of a fact which the other does not."⁸⁹ Although the criminal offenses in *Allen* arose from the same course of conduct, the Supreme Court of Pennsylvania quickly disposed of Allen's double jeopardy argument on the charges of rape and criminal trespass because each of those charges required proof of a fact which the finding of contempt did not require.

The court, however, was more perplexed by the charge of simple assault. The court found the dissent in *People v. Gray*,⁹⁰ a case decided by the Supreme Court of Illinois, persuasive in determining whether criminal contempt required proof of a fact which the other offenses did not. In the *Gray* dissent,⁹¹ criminal contempt was found to require the element of willful disobedience of a court order, which the crime of aggravated battery did not. The dissent stated "contempt retains its distinctive function in specifically protecting our judicial system from abuse."⁹² The finding of indirect criminal contempt in *Allen* required knowledge of the court's order under the Act and willful disobedience of that order. This meets the *Blockburger* test of proof of a fact which the charge of simple assault does

584, 437 A.2d 1195 (1981), and *Cipolla v. Cipolla*, 264 Pa. Super. 53, 398 A.2d 1053 (1979) (Pennsylvania Supreme and Superior Courts, respectively, held that criminal contempt does have some of the characteristics of criminal offenses and therefore appeal from a finding of not guilty of contempt would violate double jeopardy).

87. *Blockburger v. United States*, 284 U.S. 299, 304 (1932).

88. 284 U.S. 299 (1932).

89. *Id.* at 304.

90. 69 Ill.2d 44, 370 N.E.2d 797 (1977), *cert. den. sub. nom.*, *Illinois v. Gray*, 435 U.S. 1013 (1978). The Supreme Court of Illinois held that the constitutional guarantee against double jeopardy barred the defendant's prosecution for aggravated battery when the defendant had been previously convicted for indirect criminal contempt arising out of the same conduct. The defendant had violated his wife's protection order by striking her with a gun and then shooting her. See also *People v. Gartner*, 143 Ill.App.3d 113, 491 N.E.2d 927 (1986).

91. 69 Ill. 2d at 56, 370 N.E.2d at 801 (Ryan, J., dissenting).

92. 69 Ill. 2d at 58, 370 N.E.2d at 803.

not require.⁹³

The Supreme Court of Pennsylvania stressed that the purpose of the contempt order was the protection of the court's dignity and the enforcement of its order, while the purpose of the criminal charges was to punish violators of society's norms. The court found that prosecution on the substantive criminal offenses after a finding of contempt did not violate double jeopardy.⁹⁴ If criminal prosecution was barred by a finding of criminal contempt, the legislative purpose of the Act would be lost. The Act itself provided that remedies under the Act are "in addition to any other available civil or criminal remedies."⁹⁵ If, after a victim of domestic violence proceeded under the contempt provision of the Act, subsequent criminal prosecutions were barred, the victim would be forced to choose between her civil and criminal remedies.

Protection orders are effective deterrents to violence only if they are enforced. Immediate enforcement of the order by arrest, followed by prosecution for contempt, provides the victim with the intended relief, and security as well. In addition, a bar of subsequent criminal prosecution would dangerously limit the Commonwealth's ability to punish crime.⁹⁶ Such a bar might encourage abusers to continue their violence, since the only sanction available for violations of the orders would be indirect criminal contempt. Such violent acts are not only crimes against the victims, but also are crimes against the state, which must be able to intervene and hold the actor responsible for his violence. In *Allen* the court recognized that a choice between civil and criminal remedies for spouse abuse should not be required. Therefore, double jeopardy did not bar Allen's subsequent prosecution on the charges of simple assault, criminal trespass and rape.⁹⁷

93. 506 Pa. at 514, 486 A.2d at 370.

94. *Id.*

95. Title 35, § 10189. In *Missouri v. Hunter*, 459 U.S. 359 (1983), the United States Supreme Court held that the double jeopardy clause is not violated by multiple punishments for the same offense or conduct if the legislative intent to impose them is clear.

96. 506 Pa. at 515, 486 A.2d at 370.

97. In *Commonwealth v. Zerphy*, 332 Pa. Super. 388, 481 A.2d 670 (1984), the defendant contended that double jeopardy protected him from the criminal charges filed against him—attempted homicide, recklessly endangering another person, aggravated assault, disorderly conduct and criminal mischief—because he had previously been held in contempt for violating the protection order his wife had obtained. The court held that since the basis of the alleged contempt was actions against the victim of domestic violence and the basis of the criminal charges was the defendant's actions against the police, the constitutional guarantee against double jeopardy was not involved. The defendant had allegedly hit the victim who had a protection order. The victim then requested assistance from the police. When the police arrived, the abuser allegedly fired shots at marked police cars.

3. *Right to Jury Trial on Contempt Charge.*—The Protection From Abuse Act implicates another constitutional guarantee because it explicitly states that a defendant who violates a protection order does not have a right to a jury trial on the charge of indirect criminal contempt.⁹⁸ In *Eichenlaub v. Eichenlaub*,⁹⁹ the defendant contended that this provision denied him his right to a jury trial, thereby denying him equal protection of the law. The trial court found that because of the emergency nature of violations of protection from abuse orders, the volume of cases of this type, and the need for efficient and expeditious enforcement of such orders, the defendant was not denied this right.¹⁰⁰ This decision was upheld on appeal by the Pennsylvania Superior Court, which found that the authorized punishment of up to six months, or a fine not to exceed \$1000, or both, did not entitle the defendant to a jury trial.

B. *Procedural Aspects of the Act*

Proceedings under the Act are in accordance with Pennsylvania Rules of Civil Procedure 1901-1905, which were adopted by the Supreme Court of Pennsylvania in order to implement the provisions of the Act.¹⁰¹ Although these rules control the actions by the parties during the proceedings, the court has also placed limits on when a protection order is available, and on what other orders may be granted during a protection order proceeding.¹⁰²

1. *Pleadings in Response to Petition.*—Pennsylvania Rule of Civil Procedure 1904 provides that “[n]o pleading need be filed in response to the petition.” The defendant in *Mahorsky v. Mahorsky*¹⁰³ attempted to file preliminary objections to the plaintiff’s petition for a protection order. Applying Rule 1904, the court held that preliminary objections were not responsive pleadings and, therefore,

98. Title 35, § 10190(b).

99. 340 Pa. Super. 552, 490 A.2d 918 (1985).

100. 33 Pa. D. & C.3d 59, 67 (1983). See also *Commonwealth v. Miller*, 452 Pa. 35, 305 A.2d 346 (1973), which indicated that when crime prevention measures are taken, there is no conflict with the right to trial by jury.

101. Title 35, § 10189.

102. PA. R. CIV. P. 1901-1905 were promulgated by the Pennsylvania Supreme Court on March 9, 1977, and became effective 15 days after March 26, 1977. PA. R. CIV. P. 1201-1211 were promulgated to implement the Act’s emergency relief provision. These rules were adopted and became effective on March 24, 1977.

103. 22 Pa. D. & C.3d 210 (1982).

could not be filed by the defendant.¹⁰⁴

2. *Availability of Appeals From Orders.*—Once an order has been entered, the defendant may appeal only if he files exceptions. Pennsylvania Rule of Civil Procedure 1905 states that the decision of the court is governed by Rule 1038(b) to (e) inclusive. Rule 1038(d) requires the filing of exceptions to the decision of the lower court. In *Knisely v. Knisely*,¹⁰⁵ the defendant took an appeal from an order entered under the Act, contending that his actions towards his wife did not fall within the Act's definition of abuse. Pursuant to Rule 1038(d), the court held that the defendant's failure to file exceptions constituted a waiver of the issue he sought to appeal.¹⁰⁶

Similarly, objections must be timely. In *Wagner v. Wagner*,¹⁰⁷ the respondent participated in a hearing held more than ten days after the filing of the petition. The Act requires that a hearing on a petition must be held within ten days after its filing.¹⁰⁸ The court held that his participation constituted a waiver of any objection to the hearing outside the statutory period, and it stated that any objection should have been made prior to the hearing itself.¹⁰⁹

3. *Limitations on Proceedings Under the Act.*—In *Smith v. Smith*,¹¹⁰ the court refused to grant relief requested under the Act because the petition appeared to be a "tactical tool in marital litigation."¹¹¹ Application of the Act is limited to situations in which there is a "truly abused and frightened spouse,"¹¹² and an order will not be granted when only tension exists between the parties. In *Smith*, the court restricted the availability of protection orders when it found that the petition was filed not to protect an abused spouse, but rather for an alternate reason.

The court has also limited the type of orders which may be granted during a proceeding under the Act. In *Rosenberg v. Rosen-*

104. *Id.* at 212.

105. 295 Pa. Super. 240, 441 A.2d 438 (1982).

106. See also *Horvat v. Horvat*, 303 Pa. Super. 406, 449 A.2d 751 (1982); *Lucia v. Lucia*, 318 Pa. Super. 569, 465 A.2d 700 (1983). PA. R. Civ. P. 1038(d) was rescinded effective Jan. 1, 1984. Post-trial relief is now governed by Rule 227.1 which similarly requires that the party appealing must have timely raised the grounds he is asserting. If no objection is made by the party appealing, then no grounds exist for post-trial relief.

107. 15 Pa. D. & C.3d 148 (1980).

108. Title 35, § 10185(a).

109. 15 Pa. D. & C.3d at 156.

110. 18 Pa. D. & C.3d 703 (1981).

111. *Id.* at 709.

112. *Id.*

berg,¹¹³ the court denied a party's request for a permanent order of custody during a protection order proceeding. Only temporary custody and visitation rights may be awarded by the court under the Act.¹¹⁴ The Superior Court in *Rosenberg* expressly disapproved of the granting of orders for permanent custody and visitation rights with regard to minor children during a proceeding under the Act. The court stated that the Protection From Abuse Act was enacted to provide immediate relief to the victim and "was not intended to replace the established procedure for determining permanent custody."¹¹⁵

V. House Bill 2026: Experience Generates Proposed Changes

The Pennsylvania House Judiciary Committee currently is examining House Bill 2026¹¹⁶ which, if passed, would improve the Protection From Abuse Act.¹¹⁷ Emergency relief available under the Act would be extended. Battered women who are not represented by counsel would be provided court aid in filing petitions for protection. The Bill would also increase the effectiveness of police by allowing warrantless arrests when there is probable cause that the terms of the protection order have been violated and by granting civil and criminal liability for actions taken in good faith. These changes would make proceeding under the Act easier for many battered women. As discussed below, however, many areas still need to be improved.

A. Relief Unavailable to Some Battered Women

The original Act covered abuse between spouses and between persons living as spouses.¹¹⁸ The 1978 amendments extended this to abuse between household members who formerly resided together where both continue to have legal access to the residence.¹¹⁹ A significant omission in coverage, however, still remains. Abuse may

113. 350 Pa. Super. 268, 504 A.2d 350 (1986).

114. Title 35, § 10186(a)(4).

115. 350 Pa. Super. at 269, 504 A.2d at 351. See also *State ex rel. Duello v. Hoester*, 618 S.W.2d 242 (Mo. Ct. App. 1981) in which the trial judge was held to have exceeded his jurisdiction by entering an order pertaining to the dissolution of marriage proceeding when the parties were before him solely for the purpose of a hearing on adult abuse petition filed by the wife under the Missouri Adult Abuse Act, MO. REV. STAT. § 455.010 *et seq.* (1986).

116. H. 2026 (1986) (Printer's No. 2761).

117. PA. STAT. ANN. tit. 35, §§ 10181-10190 (Purdon 1977 & Supp. 1986).

118. PA. STAT. ANN. tit. 35, § 10182 (Purdon 1977).

119. PA. STAT. ANN. tit. 35, § 10182 (Purdon Supp. 1986). See *Vanderhurst v. Rice*, 17 Pa. D. & C.3d 225 (1980) (the Act is not applicable where the parties did not "reside together" or have legal access to the same residence).

continue between parties who formerly lived together where the abuse victim has subsequently established a separate residence. Although House Bill 2026 would extend the definition of "family or household members" to include persons who have been spouses and persons who lived as spouses,¹²⁰ women who are battered after they leave the residence and no longer have legal access to it would still be denied relief under the Act. In addition, battering may occur in relationships in which the parties have never cohabitated. Arbitrary exclusion of women battered following the dissolution of the domestic relationship limits the effectiveness of the Act in providing a remedy. This provision should be changed to allow relief to as broad a group of victims as possible.¹²¹

Women who are verbally threatened in the home or harassed by phone calls at the workplace have no physical evidence to show abuse; nevertheless, they are deserving of protection.¹²² The definition of abuse would be expanded by House Bill 2026 to cover these women by including the infliction of false imprisonment¹²³ as abuse. Being forced to remain in a house, although no actual offensive touching occurs, would constitute abuse under the Act.¹²⁴

Similarly, in order to provide effective protection, the Act should allow another family or household member to proceed on the victim's behalf if the victim is unable to do so because of injuries.¹²⁵

120. The victim is not denied relief under the Act if she leaves the residence to avoid further abuse. Title 35, § 10183. However, the definition section requires that the victim continue to have legal access to the residence in order to be covered by the Act. Title 35, § 10182.

121. See Lerman, *supra* note 4, at 73-74 for model coverage. "A victim of domestic violence who may be protected under this act shall include any person who has been subjected to domestic violence . . . by a spouse, former spouse, a parent, a child, or any other person related by blood or marriage, a present or former household member, a person with whom the victim has a child in common, or a person who is or has been in an intimate relationship with the victim." See also D.C. CODE ANN. § 16-1001(5) (Supp. 1986) (covering persons related by blood, legal custody, or marriage, any person with whom the victim has a child in common, a person with whom the victim shares or within the last year shared residence, and any person with whom the victim maintains or maintained an intimate relationship); OR. REV. STAT. § 107.705(2)(1985) (covering persons related by blood or marriage or persons who cohabitated within two years of the date of the filing of the petition).

122. Telephone interview with Joseph A. Lashinger, Jr., Pennsylvania House Representative for Montgomery County (Nov. 3, 1986) [hereinafter Lashinger Interview]. Representative Lashinger along with other representatives introduced House Bill 2026. Lashinger stated that difficulty arises in practice because police officers are reluctant to testify for a woman when no physical injury occurred.

123. 18 PA. CONS. STAT. ANN. § 2903 (Purdon 1983).

124. See *Kass v. Kass*, 355 N.W.2d 335 (Minn. Ct. App. 1984). The definition of abuse in the Minnesota Domestic Violence Act includes "the infliction of fear of imminent physical harm." MINN. STAT. ANN. § 518B.01(2)(a)(i) (West Supp. 1987). The court held that the use of that phrase implied that the legislature intended that there be some overt action to indicate that the family or household member intended to put another member in fear of imminent physical harm.

125. Lerman, *supra* note 4, at 84-5.

Victims of domestic violence may require hospitalization and medical treatment. Allowing others to request relief for the victim would reduce the likelihood of repeated violence.

B. Emergency Relief Provision

Currently the Act provides for emergency relief on weekends, when the court is not available. Family members who are abused during that time period may seek relief through district justices. Unfortunately, most family violence occurs after regular business hours, not only on weekends, but during the week as well.¹²⁶ The victim should not have to wait until the start of the next judicial day to obtain a protection order.

House Bill 2026 would remedy this problem by providing for emergency relief on a twenty-four hour basis. The emergency relief provision would be extended to allow the victim to file a petition with a district justice¹²⁷ when the court of common pleas is unavailable from the close of business at the end of each day to the resumption of business the next morning.¹²⁸ The emergency relief provision also would allow filing a petition with a district justice during the business day, in counties with three or fewer judges, whenever the court is unavailable because of the judges' duties outside the county, or their absence due to illness or vacation.

No gaps in relief should occur between the emergency order and the permanent order, during which time the abuser could continue his violent actions and the victim could not proceed under the contempt provision of the Act. House Bill 2026 would provide that when the court schedules a hearing on an *ex parte* protection order, the order would automatically continue in effect until the hearing occurs. In addition, the Bill would decrease the possibility that the battered woman would fail to request a permanent order in time by requiring the district justice to provide the plaintiff with: (1) instructions regarding the commencement of proceedings in the court of common pleas; (2) procedures for initiating a contempt charge if the

126. FAMILY VIOLENCE, *supra* note 3, at 40.

127. House Bill 2026 refers to bail commissioners along with district justices and Philadelphia Municipal Court Judges, and defines such as bail commissioners of the Municipal Court of Philadelphia. This comment will use the term district justice to encompass all three emergency relief providers.

128. Correspondingly, such an order would expire as of the resumption of business of the court at the beginning of the week, or within 24 hours (not 72 hours as before), whichever occurs sooner. See Lashinger, *supra* note 122. House Bill 2026 would allow the victim to go to district justices after business hours during the week because there is a lack of uniformity among the counties as to when and where judges are available at these times.

emergency order she obtained is violated; and (3) information regarding local assistance programs for domestic violence victims and the availability of free legal assistance.

C. *Venue and Transfer of Orders*

Shelters often house abused women from neighboring counties, although currently petitions can only be filed in the county of the woman's residency.¹²⁹ Venue for actions under the Act would be expanded by House Bill 2026 to include "the city where the plaintiff or defendant resides or formerly resided or in which the plaintiff is employed or in which an incident of abuse took place."¹³⁰ This gives victims of abuse easy access to the most convenient court without requiring residency in the county. In addition, House Bill 2026 provides that if the victim, in order to minimize the possibility of further abuse, removes her residence or employment from the county where the abuse occurred, venue would not be barred in that county.¹³¹ The victim still would be able to file a petition in that county if she wished.

Under House Bill 2026, once a victim has obtained a protection order, she would be able to have it transferred to another county. The court of the county to which a valid order is transferred would have authority to enforce and modify the order. The court which transferred the order would still be able to enforce the order, but would relinquish authority to modify the order. A defendant would be able to raise objections to the transfer by filing a petition with the receiving county. When the protection order is transferred, the court would be required to give notice to "the issuing court, the plaintiff, the defendant, and the appropriate law enforcement agency in the receiving county."¹³²

Although this addition of transfer of orders by House Bill 2026 would allow a victim to receive protection in a county other than the issuing county, she must file a motion for the transfer and await the actual transfer. Limiting the authority of other counties to enforce protection orders issued by a county, without the petitioner transferring it, restricts the effectiveness of the Act. Protection orders should

129. Lashinger, *supra* note 122.

130. H. 2026 (1986) (Printer's No. 2761). *See, e.g.* N.Y. JUD. LAW § 821(4) (McKinney Supp. 1980) (emergency relief available nights).

131. House Bill 2026 states that venue would not be barred in this situation. However, the Bill does not state whether the victim has to prove that she left for this reason.

132. H. 2026 (1986) (Printer's No. 2761).

be effective throughout the state in all counties.¹³³ Instead of requiring the victim to request a transfer, the Act should contain a full faith and credit provision.

D. Court-Provided Aid

The Bill would give court-provided aid in filing petitions to financially limited women who seek relief under the Act.¹³⁴ Anyone not represented by counsel must be provided with simplified forms and clerical assistance in English or Spanish to help with writing and filing the petition.¹³⁵ The plaintiff also would be advised of her right to file an affidavit stating that she does not have funds available to pay the costs of filing and service. In addition, the court would assist her in preparing the affidavit.¹³⁶ Although free legal services are available to battered women, the supply is limited and the process takes time. Most orders are issued under the Act's emergency relief provision and therefore require immediate attention.¹³⁷

Court-provided aid would increase the availability of protection orders to abused spouses who might otherwise hesitate before seeking a protection order because they do not understand the procedure and cannot afford an attorney. Along with permitting court-provided aid, the Act should also contain a section explicitly stating that the clerk of the court shall not render advice or services to parties in protection order proceedings that call for the professional judgment of a lawyer.¹³⁸ This limit on court-provided aid is needed to defend the Bill against possible claims that the clerk is practicing law, which is prohibited by the Pennsylvania Code of Professional

133. Lerman, *supra* note 4, at 78-9. See, e.g. N.H. REV. STAT. ANN. § 173B:1(a) (Supp. 1983).

134. This would be required of the common pleas courts, district justices and the Municipal Court of Philadelphia. See FAMILY VIOLENCE, *supra* note 3, at 40 (recommends that simplified forms and directions for filling them out be available at the courtroom, all police stations and sheriff's offices).

135. See State *ex rel.* Patrick v. Kidd, 631 S.W.2d 666 (Mo. Ct. App. 1982) in which the court held that a litigant under Missouri's Adult Abuse Act, MO. REV. STAT. §§ 455.010 *et seq.* (1986), does not have to prove to the circuit clerk that she is not represented by counsel in the proceedings. The litigant need only advise the clerk that she is not represented by counsel, and then the clerk must render assistance as required by the Act.

136. Many states currently allow victims to file petitions without a lawyer and require the court clerk to assist the victim in filing the petition. See, e.g. N.H. REV. STAT. ANN. § 173-B:3(III) (Supp. 1983); MINN. STAT. § 518B.01(4)(d) (Supp. 1986); UTAH CODE ANN. § 30-6-4 (1984). Some courts must prepare forms usable by lay people. See, e.g. ARIZ. REV. STAT. ANN. § 13-3602(B) (Supp. 1986); ME. REV. STAT. ANN. tit. 19, § 764(2) (1981); MO. ANN. STAT. § 455.025 (Vernon 1986).

137. See Lashinger, *supra* note 122.

138. Lerman, *supra* note 4, at 86.

Responsibility.¹³⁹

E. Additional Forms of Relief

The court would be able to grant additional forms of relief to the victim under House Bill 2026. The protection order could prohibit the defendant from having contact with the plaintiff not only in the residence, but also in the plaintiff's place of employment, business or school. Battered women are often harassed outside the residence when the abuser is excluded from the residence.¹⁴⁰ Although not provided for by the Bill, to facilitate police intervention when such a protection order exists, the plaintiff should be directed by the judge to carry the protection order with her at all times, thereby allowing the police to verify its existence quickly. The plaintiff's employer may also play an important role in protecting her from harassment by the abuser while at her workplace. The employer should be informed of available actions, such as criminal trespass, which he may invoke against the abuser if he appears at the workplace of the plaintiff.¹⁴¹

To make orders granted under the Act more effective, House Bill 2026 provides that judges who issue the orders¹⁴² should notify the respondent of the ramifications of a violation of a protection order which grants exclusive possession of the residence to the petitioner. Furthermore, since many batterers, promising to reform, return to the residence after a protection order has been granted, the judge should be able to recommend to the victim that she not invite the respondent to the residence and that she decline any request or demand by him to enter the residence.¹⁴³ This is not addressed by the Bill, but it should be included because it might indirectly keep the abuser from trying to persuade the victim to allow him into the residence.

139. PENNSYLVANIA CODE OF PROFESSIONAL RESPONSIBILITY EC 3-5 (1974). "It is neither necessary nor desirable to attempt the formulation of a single, specific definition of what constitutes the practice of law. Functionally, the practice of law relates to the rendition of services for others that call for the professional judgment of a lawyer Where this professional judgment is not involved, non-lawyers, such as court clerks . . . [and others] may engage in occupations that require a special knowledge of law in certain areas." See, e.g. ME. REV. STAT. ANN. tit. 19 § 764(2) (1981); MO. ANN. STAT. § 455.025 (1986); N.J. STAT. ANN. § 2C:25-12(c) (West 1982).

140. Lashinger, *supra* note 122.

141. Brown, *Remaining Problems With the Adult Abuse Act*, J. MO. B. (Dec. 1982) 582, 587.

142. See FAMILY VIOLENCE, *supra* note 3, at 34 (judges and judicial proceedings are critical components in ending family violence).

143. Lerman, *supra* note 4, at 107-108.

If there has been a prior protection order involving the same parties, this indicates a scenario in which the respondent pleads with the petitioner to let him back into the residence, even though she has been granted exclusive possession. Once inside, the abuser continues his violent actions, inflicting physical and mental harm on the victim, who believed the batterer's declaration that he had reformed. Certainly in this situation, in order to prevent the abuse from recurring, the judge should be able to prohibit the petitioner from inviting or admitting the respondent to the residence while the protection order is in effect.¹⁴⁴ This prohibition will inform the petitioner that she cannot allow the respondent back into the residence, even if he promises to reform, because the court has prohibited her from allowing him into the residence. She will be better prepared to say "no" to the abuser's requests for admittance, since she has an order from the court prohibiting her from doing so. She will be less likely to expose herself to the danger of further abuse once she has the protection order. If the abuser does resume residence in the household, House Bill 2026 explicitly states that the protection order would not be nullified.¹⁴⁵

House Bill 2026 consolidates a battered woman's petition for protection with her request for recovery of damages she sustained as a result of the abuse. Because of financial restraints, battered women often cannot bring a separate civil action against the abuser for money damages. Under the Bill, the court would be able to order the defendant to pay monetary damages as an additional form of relief to a battered woman asking for a protection order.¹⁴⁶ This type of relief would compensate the plaintiff for reasonable losses she suffered as a result of the abuse. These losses could include "medical, dental, relocation and moving expenses, counseling, loss of earning or support, attorney fees and other out-of-pocket losses for injuries

144. See OHIO REV. CODE ANN. § 3113.31(E)(2) (Baldwin 1986) (the court may prohibit the respondent from returning to the residence and may prohibit the petitioner from inviting or admitting the respondent to the residence while the protection order is in effect).

145. Lashinger, *supra* note 122. Lashinger stated that police are reluctant to enforce a protection order when the respondent has resumed residency in the household after the petitioner has been granted exclusive possession by the court.

146. Lashinger, *supra* note 122. Lashinger stated that a criticism of allowing this consolidation is that it creates "a hearing within a hearing." Opponents of consolidation think that the issues should be dealt with separately. Furthermore, proposed changes to the Pennsylvania's Crime Victims Compensation Board regulations would allow battered spouses to be eligible for compensation. Previously, the regulations excluded family members, but the change would allow a battered spouse to receive compensation unless the "offender is living in the same household as the victim and [would] benefit from the award." 16 PA. BULL. 2141 (1986) (to amend 37 PA. ADMIN. CODE § 191.9).

sustained."¹⁴⁷

Under the current Act, a plaintiff who, for financial reasons, is unable to pay the costs of filing or service may file an affidavit stating such, and she will not have to pay unless, at the hearing on the petition, the court rules that the plaintiff is not indigent. In keeping with the requirement that the abuser must bear the burden of paying for the damage he has caused, House Bill 2026 would give the court a choice of waiving the payment of costs or assigning them to the defendant.

F. Police Response and the Probable Cause Arrest Act

The current Act allows police officers to make a warrantless arrest if probable cause exists that a violation of the terms of the protection order has occurred. The violation need not have been committed in the presence of the police officer. To encourage police officers to make use of this right, the Bill contains a much-needed provision which protects the police from civil and criminal liability for actions taken in good faith and with due care while making a warrantless arrest.¹⁴⁸

The Probable Cause Arrest Act of 1986¹⁴⁹ has a provision similar to the Act's, which authorizes warrantless arrests in certain cases of domestic violence. Warrantless arrests by police were previously limited to those situations in which a felony was alleged to have occurred, or in which the officer witnessed the misdemeanor offense. Since most domestic violence constitutes only a misdemeanor¹⁵⁰ under the Crimes Code, immediate arrest of the abuser is precluded in many spouse abuse situations.¹⁵¹ Under the Probable Cause Arrest Act,¹⁵² police officers have the same right to arrest a batterer without a warrant, as in a felony, whenever there is probable cause

147. H. 2026 (1986) (Printer's No. 2761). See also FAMILY VIOLENCE, *supra* note 3, at 35 (states that making abusers accountable for their conduct includes financial responsibilities, and recommends that abusers be required to provide restitution to the victims for expenses resulting from the crime. See, e.g. ILL. ANN. STAT. ch. 40 §§ 2302-8 (Smith-Hurd Supp. 1982); ME. REV. STAT. ANN. tit. 19, § 766(1)(I) (1981).

148. See, e.g. N.C. GEN. STAT. § 14-134.3(19) (1978 & Supp. 1979); OR. REV. STAT. § 13.315 (Supp. 1979).

149. Probable Cause Arrest Act of 1986, Pub. L. No. 1986-10, 1986 Pa. Legis. Serv. 43 (Purdon).

150. N. LOVING, RESPONDING TO SPOUSE ABUSE AND WIFE BEATING—A GUIDE FOR POLICE 47 (1980). The author states that misdemeanors constitute the bulk of domestic violence cases.

151. RULE OF THUMB, *supra* note 21, at 16 (police officers testified that misdemeanor arrest laws prevent arrest in most domestic violence cases).

152. Probable Cause Arrest Act, *supra* note 149.

to believe the defendant has committed simple assault,¹⁵³ aggravated assault,¹⁵⁴ or has recklessly endangered¹⁵⁵ his spouse. Therefore, police officers may make warrantless arrests in domestic violence situations when the conduct constitutes a misdemeanor, even though the officer was not present when the attack occurred. This right is qualified by requiring the police officer to find recent physical injury to the victim before he can make a warrantless arrest.

The Probable Cause Arrest Act also provides that the arresting officer shall seize all weapons used by the defendant in the commission of the alleged offense.¹⁵⁶ While this covers conduct which violates the Crimes Code, House Bill 2026 contains an analogous provision for seizure of weapons when a protection order is violated. Furthermore, under the Bill, as part of the protection order, the court might order the respondent to relinquish all weapons used or threatened to be used either during the alleged violation or in any prior incident of abuse. To safeguard the defendant's due process rights,¹⁵⁷ House Bill 2026 provides that in either situation the weapons shall remain in the sheriff's possession until the court issues an order specifying that the weapons should be relinquished, and to whom they should be relinquished.

In addition, the Probable Cause Arrest Act requires an officer who arrives at the scene of family violence to notify the victim of available shelter services, and to inform her that she has the right to be protected by court order from further abuse. House Bill 2026 does not require these actions by an officer when he responds to a call for a violation of a protection order. To strengthen the impact of the Act, the Act itself should require the officer, in addition to apprising the victim of her rights,¹⁵⁸ to assist her in obtaining medical treatment, if necessary, and shelter services, if available in the community.¹⁵⁹

The problem of police discretion as to whether to make an arrest for a violation of a protection order still remains, even with the change proposed by the Bill. Police officers should have a statutory

153. 18 PA. CONS. STAT. ANN. § 2701 (Purdon 1983).

154. 18 PA. CONS. STAT. ANN. § 2702(a)(3), (4) and (5) (Purdon 1983).

155. 18 PA. CONS. STAT. ANN. § 2705 (Purdon 1983).

156. 18 PA. CONS. STAT. ANN. § 2711(b) (Purdon 1983).

157. Lashinger, *supra* note 122.

158. See, e.g. MASS. GEN. LAWS ANN. ch. 209A § 1-6 (West Supp. 1986) (establishes an affirmative duty upon police to assist abused spouses and to inform them of their rights and available remedies).

159. See, e.g. ILL. ANN. STAT. ch. 40 § 2303-4(a) (Smith-Hurd Supp. 1982) (the officer must also accompany the abused spouse to her residence to remove personal belongings).

duty to enforce protection orders obtained under the Act, and correspondingly, they should be immune from civil liability for good faith enforcement.¹⁶⁰ Attitudes of law enforcement agencies towards domestic violence are unlikely to change quickly. A provision for police training in handling domestic violence would help change these outdated attitudes.¹⁶¹ The focus of current police training in domestic abuse is crisis intervention,¹⁶² which fosters the attitude that such abuse is not a crime. The focus of police training should be law enforcement.

G. Data Collection

Although the Protection From Abuse Act was enacted over a decade ago, the general public remains unaware of the extent and seriousness of spouse abuse.¹⁶³ Only after the magnitude and pervasiveness of spouse abuse are revealed will the public actively demand that the legislature and law enforcement agencies effectively respond to the problem. Accurate and complete data must be collected.¹⁶⁴ Law enforcement agencies should be required to keep separate records of domestic violence, including reasons for charges not being filed.¹⁶⁵ The information gathered may be useful in the particular court proceeding, and then may become part of the general statistics on domestic violence. This will increase police accountability, and it will aid in legislative decision-making, such as the appropriate funding¹⁶⁶ of domestic violence programs.

160. See, e.g. ARIZ. REV. STAT. ANN. § 13-3602(1) (Supp. 1986); COLO. REV. STAT. § 14-4-104 (Supp. 1984). See *Dudosh v. City of Allentown*, 629 F. Supp. 849 (E.D. Pa. 1985) (administrator of murder victim's estate set forth a cause of action for denial of the victim's right to equal protection of the laws under U.S. Const. amend. XIV, where the victim had obtained a protection order, contacted the city numerous times to obtain assistance pursuant to such order, and shortly before her death personally informed individual officers of her boyfriend's continuous harassment and threats of murder and suicide).

161. See generally *LOVING*, *supra* note 150; Lerman, *supra* note 4, at 133-35.

162. Lerman, *supra* note 4, at 133-34.

163. UNITED STATES COMMISSION ON CIVIL RIGHTS, *THE FEDERAL RESPONSE TO DOMESTIC VIOLENCE* 77 (Jan. 1982).

164. *Id.* (there is a consistent lack of data collection on spouse abuse).

165. *Inside ABA: News Update, Eight-Part Program to Combat Family Violence*, 70 A.B.A. J. 145 (April 1984). The proposal also suggested that appropriate government agencies should collect and analyze data related to the frequency, seriousness, and other characteristics of spouse assault. See, e.g. ILL. ANN. STAT. ch. 40, § 2303-2 (Smith-Hurd Supp. 1982); IOWA CODE ANN. § 236.9 (1985); ME. REV. STAT. ANN. tit. 19, § 770 (1981). See also *FAMILY VIOLENCE*, *supra* note 3, at 20 (recommends that officers be required to file written reports on all reported incidents of family violence).

166. In many states shelter funds are generated through the imposition of a surcharge on marriage licenses. See, e.g. ALA. CODE § 30-6-11 (1983); FLA. STAT. ANN. § 741.01(2) (West 1986); NEV. REV. STAT. § 122.060(4) (1985). But see *Boynton v. Kusper*, 112 Ill. 2d 356, 494 N.E.2d 135 (1986) (the Illinois Supreme Court struck down a \$25 surcharge on

IV. Conclusion

To some extent, spouse abuse will continue to exist no matter what laws are enacted to prevent its occurrence. Society, however, cannot allow abusers to go unpunished merely because of the difficulties encountered with domestic violence laws. The Pennsylvania Protection From Abuse Act was a pioneering law when it was enacted in 1976. Spouse abuse has not changed since then, but our knowledge about it has increased. With this knowledge society is better able to protect women from threatened abuse. The proposed changes in House Bill 2026 are a result of the practical experience gained during the last decade. Although House Bill 2026 would increase the effectiveness of the Act, problems still remain. Unfortunately, only with more experience will these problems be brought to the attention of our legislators, and the needed amendments be made to the Act.

Connie Jean Merwine

marriage licenses to fund programs for victims of domestic violence because it violates the due process clause of the Illinois Constitution).